

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-1146V

UNPUBLISHED

NIKKI RUDD,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 10, 2021

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Kathryn Lee Bruns, Faraci Lange, LLP, Rochester, NY, for petitioner.

Kimberly Shubert Davey, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On August 7, 2019, Nikki Rudd filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (SIRVA) after receipt of the influenza (flu) vaccine on October 5, 2016. Petition at 1. Petitioner further alleges that the vaccine was administered in the United States, onset of symptoms began within 48 hours of vaccination, her symptoms persisted for more than six months, and she has never received compensation in the form of an award or settlement for her vaccine-related injuries. Petition at 1, 5-6. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 29, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On February 10, 2021, Respondent filed a proffer on

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

award of compensation (“Proffer”) indicating Petitioner should be awarded \$52,928.91. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$52,918.91 in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.

On August 7, 2019, Nikki Rudd (petitioner) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”), 42 U.S.C. §§ 300aa-1 to -34. Petitioner alleged that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered to her on October 5, 2016. Petition at 1. On December 21, 2020, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report recommending that compensation be awarded, and the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation on December 29, 2020. ECF No. 24; ECF No. 25.

Respondent proffers that petitioner should be awarded \$52,500.00 in actual pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents her expenditure for past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$428.91, as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following: a lump sum payment of \$52,928.91, representing compensation for actual pain and suffering (\$52,500.00), and past unreimbursable expenses (\$428.91), in the form of a check payable to petitioner, Nikki Rudd.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Nikki Rudd:	\$ 52,928.91
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Respectfully submitted,

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/s/ Kimberly S. Davey
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